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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,358	07/17/2003	Ken'ichi Okuno	TD-US000805A	8899
22919	7590	07/30/2004	EXAMINER	
SHINJYU GLOBAL IP COUNSELORS, LLP 1233 20TH STREET, NW, SUITE 700 WASHINGTON, DC 20036-2680			DESTA, ELIAS	
			ART UNIT	PAPER NUMBER
			2857	

DATE MAILED: 07/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/620,358

Applicant(s)

OKUNO ET AL.

Examiner

Elias Desta

Art Unit

2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16 and 21-36 is/are rejected.
- 7) ☒ Claim(s) 17-20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Detailed Action

Drawing

1. The examiner accepts the amended drawing (Figure 2) filed on July 17, 2003.

Specification

2. The specification is objected to because of the following minor informalities:
 - The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification; for instance, page 1, lines 5 to 6 better reads "The present invention relates to quality control and technology support for analyzers"; line 11 insert "are" after "methods" and line 16, add "In order" before "to" etc....

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir.

Art Unit: 2857

1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 16, 21 and 30-36 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 9, 12 and 13 of U.S. Patent No. 6,629,060.

Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 16 of the instant application includes a control device that is used to control a plurality of analyzers is also described in claim 1 of U.S. Patent 6,629,060 as a support method for analyzers adapted to be employed in a control device connected to a plurality of analyzers. Further, both claim 16 of the instant case and claim 1 of U.S. Patent 6,629,060 provide a means for collecting data from each analyzer through a network and have a means for storing the operational information.

However, the difference is the fact that claim 16 of the instant application provides a screen-controlling means that controls the output screen for displaying the analyzer designation from the analyzers, whereas claim 1 of

U.S. Patent 6,629,060 provides a means for outputting the collected operational information in response to an instruction by an operator of the control device.

The output means in claim 1 of U.S. Patent 6,629,060 would have been found by an ordinary skill in the art as an obvious variation of the output means of claim 16 of the instant case because claim 1 of U.S. Patent 6,629,060 teaches a display means, a well known means of outputting collected information; further the output means in claim 1 of U.S. Patent 6,629,060 is controlled by the instruction from an operator of the control device which is a screen controlling means that would have provided a means to display an analyzer designation screen for designating the specific analyzer from the analyzers because a control method for the networked analyzers helps the user to analyze the analyzers.

In claim 21 of the instant application the control device comprises communication control means for judging whether an authentication information received from the analyzer corresponds to a user information, and determining whether the collecting means collects the log information from the analyzer based on judging result. Claim 9 in U.S. Patent 6,629,060 shows that the support method for analyzers is implemented in a network and has a remote logging apparatus, which provides a window view of the partial view of the controlling apparatus; hence, the network with a remote logging capability

Art Unit: 2857

would provide some form of an authentication means because the transmitted data with respect to respective analyzers is related to a patient data which would often requires confidentiality or authorization.

Claim 30 of the instant application is about a quality control method that comprises transmitting quality control data, receiving tally results and displaying the received tally. Claim 12 of U.S. Patent 6,629,060 includes collecting a quality control sample data from each analyzers in real time as the analyzer generates the quality control sample data from the quality control sample, and notifying the tally results to each of the analyzers, this is equivalent to transmitting and receiving tally result from the analyzers and displaying the received tally result on the display because notification in claim 12 of U.S. Patent 6,629,060 is described in the context of displaying the received result. Claims 31 and 32 of the instant application are addressed in claim 13 of U.S. Patent 6,629,060.

Claims 35 and 36 of the instant application discuss collecting, tallying and displaying the tally result to the analyzer through the network, which are also noted in claim 12 of U.S. Patent 6,629,060 where displaying is equivalent to notifying to the analyzers.

5. Claims 24-26, 28, 33 and 34 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over

claims 1, 9, 12 and 13 of U.S. Patent No. 6,629,060 in view of Kilmasauskas (U.S. Patent 6,110,214).

The limitation in claim 24 of the instant application is met by claim 12 of U.S. Patent 6,629,060; however, claim 24 includes a storage means for storing the collected quality control sample data. As noted in claim 12 of U.S. Patent 6,629,060, the system includes computer-implemented steps of collecting quality control sample data.

Kilmasauska teaches an analyzer for modeling and optimizing maintenance operations (see Kilmasauska, Fig. 3 and Abstract). The analyzer includes a storage means for storing collected data (see Fig. 3, devices 94, 96 and column 5, line 63 to column 6, line 4).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the means for collecting control sample data as taught in claim 12 of U.S. Patent 6,629,060 and incorporate a storage means for storing the collected quality control sample data as shown in Kilmasauska, Fig. 3 in order to store sample data values for further analysis or operation because the storage means provides the user with a means to store historical data and further use the historical value as an input to run selective analysis on individual analyzers (see Kilmasauska, column 6, lines 10-20).

Claim 25 of the instant application includes a means to provide the tally result in response to request from the analyzer. This means is equivalent to the means in claim 12 of U.S. Patent 6,629,060 for collecting quality control sample that is collected from the analyzer as the analyzer determines that the sample is a quality control sample and generates the quality control sample data.

Claims 26, 33 and 34 of the instant application provides a means to tally the result in response to request from WWW browser installed in the analyzer, and claim 9 of U.S. Patent 6,629,060 teaches a means for remotely logging on to the analyzer such that a window displayed at the analyzer is at least partially displayed at the control device. In order provide appropriate interface for remote logging, the system in claim 9 of U.S. Patent 6,629,060 has to have some type of browser application in order to facilitate the interaction between the remote and the control sites because the use of WWW browser is well known in the art at the time the application was filed (see Vetter et al., page 49).

Claim 28 of the instant application includes a collection means that collects a reference data from the analyzer and providing a means, which provides the tally result including the reference data. Claim 12 of U.S. Patent 6,629,060 provides a method of tallying the quality control sample data, which is equivalent to reference data for each quality control sample or tallied result.

6. Claims 27 and 29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 9, 12 and 13 of U.S. Patent No. 6,629,060 in view of Klimasauskas (U.S. Patent 6,110,214) and Colef et al. (IEEE Article, 'New In-Situ Calibration of Diode Detectors Used in Six-Port Network Analyzers).

In reference to Claims 27 and 29: the method of tallying result includes a mean or average value of the collected quality control sample data within predetermined time frame where the tally result is provided to the analyzer in a form of static graph based on the tally result on the analyzer. Claim 25 of U.S. Patent 6,629,060 teaches a retrieval means for retrieving a result of tally that the control device performed based on the quality control sample data transmitted by the transmission means, but does not provide a method of tallying a mean value of collected quality data where the tally result is provided to the analyzer in the form of static graph.

Colef et al. teaches calibration of diode detectors used in six-port network analyzers (see Colef et al., page 201, Introduction). The method includes measuring the incident power on the diode detector over the range of operating points. Further a curve of an exponential equation is chosen to fit the measurement data (see Colef et al., page 201, conventional method) and provides magnitude versus frequency for automatic network analyzer and six-port reflectometer at a specific time (see Colef et al., page 203).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the analyzer with a retrieval means as noted in claim 25 of U.S. Patent 6,629,060 and incorporate the mean (or average) value collected sample data within a predetermined time frame, as noted in Colef et al. page 201 and 203, in order to obtain mean tally results to the analyzer and display static graph based on the tally result because the curve-fitted mean tally values would enable the user to achieve minimum mean square error (see Colef et al., page 201, Conventional Method) and a better static measurement of amplitude versus frequency graph for a given time as noted in Colef et al. page 203.

Claim rejection – 35 U.S.C. 101

7. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states, "Whoever invents or discovers any new and useful process ... may obtain a patent therefor..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

8. Claims 22 and 23 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 12 and 14 of prior U.S. Patent No. 6,629,060 respectively. This is a double patenting rejection.

Allowable Subject Matter

9. Claims 17-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

10. Citation of pertinent prior art:

- Reid et al. (U.S. Patent 6,298,308) teaches diagnostic network with automated proactive local experts, which is a method that invokes conditions for monitoring a plurality of machines.
- Margrey et al. (U.S. Patent 5,366,896) teaches robotically operated laboratory system that relates to an integrated analytical system.
- Slemeyer (UASG, 'A Depletion Compensated Wet Bath Simulator for Calibrating Evidential Breath Alcohol Analyzers') teaches the design principle of new wet bath simulator system that offers a long-term stable output concentration at a defined temperature.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elias Desta whose telephone number is (571)-272-2214. The examiner can normally be reached on M-Thu (8:30-7:00).

Art Unit: 2857

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc S. Hoff can be reached on (571)-272-2216. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-308-5841 for regular communications and (703)-308-5841 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1782.

Elias Desta
Examiner
Art Unit 2857

-ed

July 13, 2004


MARC S. HOFF
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800